

Owensby vs. City of Cincinnati, et al.  
October 15, 2003

VICTOR N. SPELLER

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## UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF OHIO

## WESTERN DIVISION

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ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
:  
Plaintiffs, :  
vs. : Case No. 01-CV-769  
: (Judge S. A. Spiegel)  
CITY OF CINCINNATI, :  
et al., :  
:  
Defendants. :  
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Videotaped deposition of VICTOR N.

SPELLEN, a defendant herein, called by the  
plaintiffs for cross-examination, pursuant to the  
Federal Rules of Civil Procedure, taken before me,  
Wendy Davies Welsh, a Registered Diplomatic Reporter  
and Notary Public in and for the State of Ohio, at  
the offices of Helmer, Martins & Morgan Co. LPA,  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
Cincinnati, Ohio, on Wednesday, October 15, 2003, at  
10:12 a.m.

Owensby vs. City of Cincinnati, et al.  
October 15, 2003

VICTOR N. SPELLER

Page 26	Page 28
1 A. Correct.	1 A. I didn't, no.
2 Q. Have you been one of the officers trying	2 Q. And do you have any knowledge as to what
3 to restrain someone where -- where another officer	3 it feels like if it is applied and you're cut?
4 has applied the Mace?	4 A. I have never experienced that, no.
5 A. Correct.	5 Q. I take it your nose runs?
6 Q. Does -- to your recollection, does the	6 A. Yes, sir.
7 City of Cincinnati Police Department have standards	7 Q. What happens with your eye-- do your
8 for how an officer is to apply Mace to a suspect?	8 eyes -- your eyes burn?
9 A. Yes, somewhat.	9 A. Yes, sir.
10 Q. And do you recall what those standards	10 Q. Do they swell up?
11 are?	11 A. You just -- your -- your vision gets
12 A. Basically two to three bursts and -- and	12 blurry and they burn.
13 being at a certain distance.	13 Q. In addition to water, are you instructed
14 Q. Do you recall what the distance is?	14 to try and have the person face like into the wind
15 A. Not right now, no.	15 or get some air into their face?
16 Q. In the field, when you were either	16 A. I -- I remember something like that, yes.
17 applying Mace or helping another officer apply Mace,	17 Q. Do you recall any instruction concerning a
18 in general, how far was the officer from the suspect	18 person who has just been Maced should not be placed
19 when he employed the Mace, he or she employed the	19 into a confined space where there is no air
20 Mace?	20 circulation?
21 A. Well, things happen in the field that you	21 A. No, sir.
22 can't really, you know, you can't really go by the	22 Q. You don't recall that?
23 book of being certain feet. I mean --	23 A. No.
24 Q. No, I mean, in general, what was the	24 Q. In your experience do you recall any
Page 27	Page 29
1 distance?	1 instruction, either at the academy or instruction
2 A. Maybe an arm's length. Maybe closer.	2 received after leaving the academy, that authorized
3 Q. Okay. Do you recall receiving any	3 an officer to strike a suspect after the suspect had
4 instruction on how to care for someone who has been	4 been handcuffed?
5 Maced once they've been secured, that is, either	5 A. No, sir.
6 handcuffed or in some other fashion restrained?	6 Q. Do you recall any instruction as to the
7 A. Somewhat.	7 responsibility of an officer once the suspect has
8 Q. What do you recall about that?	8 been handcuffed, if the -- if the suspect is injured
9 A. I think maybe you should -- should apply	9 in some way, to care for the injuries sustained by
10 cold water on the face. Simple.	10 the suspect?
11 Q. Have you ever been Maced?	11 A. Yes, sir.
12 A. Yes, sir.	12 Q. What do you recall about that?
13 Q. What's it feel like?	13 A. If that's your prisoner, you're to get him
14 A. It depends. I -- I've -- I've gotten to a	14 medical attention right away.
15 point where it doesn't affect me anymore.	15 MS. GEILER: Can you speak up, please.
16 Q. Okay. The first time you were Maced.	16 Q. Just try to keep your voice up a little
17 A. It was not good.	17 bit. The mike's fine, but that's for the people
18 Q. Can you describe it?	18 here in the room, if you could.
19 A. It burns your face, it burns your --	19 As I understand it, you said that if it's
20 inside of your nostrils, your nose, your eyes. You	20 your prisoner you have to get medical attention for
21 know, it feels like you're on fire almost.	21 the person right away?
22 Q. Your throat?	22 A. Correct.
23 A. Correct.	23 Q. Okay. In September or October of 2000, in
24 Q. Did you have trouble breathing?	24 the two months before November 7, did you from time

Page 26 - Page 29

Owensby vs. City of Cincinnati, et al.  
October 15, 2003

VICTOR N. SPELLER

Page 50	Page 52
1 A. Well, I knew he was -- he'd been Mace'd, so 2 I figured the Mace was taking effect at this point. 3 Q. And when you looked in, what position was 4 Mr. Owensby in? 5 A. I basically saw an outline of a figure 6 somewhat slumped over in the back of a cruiser. 7 Q. Was he coughing or spitting or wheezing? 8 A. Not to my knowledge at the time. 9 Q. Did you see any movement? 10 A. Not that I can remember. I looked in 11 maybe a second or two. 12 Q. In your experience with people who had 13 been involved in a struggle with the police and had 14 been Mace'd, was that uncommon that the person would 15 not be moving after having been Mace'd? 16 A. It's not uncommon. 17 Q. It's not uncommon? 18 A. I mean, I -- people have been -- I -- I've 19 been Mace'd and it doesn't affect me. It doesn't 20 affect everyone. 21 Q. Okay. 22 A. It's not unusual. 23 Q. At the time on November 7, 2000 you had 24 EMT training, correct?	1 Brazile had seen Mr. Owensby? 2 A. I did not know, sir. 3 Q. If all you saw was a silhouette, how did 4 you arrive at the judgment that "Looks like he's ... 5 hurting a little bit"? 6 A. Because I'm assuming the Mace took effect. 7 Q. What do you mean by "took effect"? 8 A. Well, when you Mace someone, it takes 9 effect and, like we discussed before, you know, 10 it -- it -- it gets into your nostrils, gets into 11 your eyes, gets into your -- to your mouth, and 12 that's how it takes effect. 13 Q. And you're hurting? 14 A. Correct. 15 Q. If you're hurting, wouldn't you be moving? 16 A. I have -- 17 MR. HARDIN: Objection. 18 You may answer. 19 A. I have no idea, sir. I don't know. 20 Q. From your observation, was Officer Caton 21 angry? 22 A. He didn't appear to be angry. 23 Q. You asked -- referring back to Exhibit 21 24 on the second page, you asked Officer Brazile
Page 51	Page 53
1 A. Previous, correct. 2 Q. Previously? 3 A. Right. 4 Q. And so you were qualified for advance EMT 5 training -- or EMT medical care? 6 A. Correct. 7 Q. Did you feel that you should have 8 administered some sort of first aid to Mr. Owensby? 9 A. I had no reason to believe that I should 10 at that time. 11 Q. Well, you knew he had been Mace'd? 12 A. Correct. 13 Q. How did you know he had been Mace'd? 14 A. From the radio. 15 Q. What did you -- the radio transmission on 16 what we've just seen or something else? 17 A. I believe -- I believe so. Correct. 18 Q. Okay. Did you ever see Mr. Owensby's 19 face? 20 A. No, I did not. 21 Q. Do you know if Officer Brazile, when 22 Officer Brazile said to you -- when you said, "Looks 23 like he's ... hurting a little bit," and he said, 24 Brazile said, "Lot a bit," do you know if Officer	1 whether or not the suspect was "fucked up." Did you 2 form an opinion as to whether or not he was? 3 MR. HARDIN: Objection. 4 You may answer. 5 A. No, sir. 6 Q. No, you had no opinion? 7 A. No. 8 (Deposition Exhibit was marked for identi- 22 fication.) 9 10 Q. Let me show you what is marked as 11 Exhibit 22. Exhibit 22 is a statement that you gave 12 to Cincinnati police investigators on November 10th, 13 2000, correct? 14 A. Correct. 15 Q. And this is one of the statements that 16 you've reviewed in preparation for the deposition? 17 A. Yes, sir. 18 Q. Is it accurate? 19 A. Yes, it is. 20 (Deposition Exhibit was marked for identi- 23 fication.) 21 22 Q. Let me show you what's marked as 23 Exhibit 23. Exhibit 23 is a statement that you gave 24 to Cincinnati police investigators on -- two days

Page 50 - Page 53

(800) 578-1542 \* MERIT \* (513) 381-8228

Owensby vs. City of Cincinnati, et al.  
October 15, 2003

VICTOR N. SPELLER

Page 78	Page 80
<p>1 MR. HARDIN: Keep going.      2 Go back one.      3 THE WITNESS: Oh.      4 A. Okay.      5 Q. Do you see that there is a specification      6 charge? Specification 1 is that you "demonstrated a      7 'neck hold' that Officer Jorg demonstrated to      8 Sergeant Watts. When Officer Spellen was summoned      9 to testify to what he observed at 2098 Seymour      10 Avenue on November 7, 2000, he demonstrated a      11 different hold. Officer Spellen admitted he      12 intentionally altered this hold in court in favor of      13 Officer Jorg."</p> <p>14 Do you understand that that last sentence      15 I just read, intentionally altered this hold in      16 court to favor Officer Jorg, would be based on the      17 interview that we just looked at in Exhibit 25?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And the rule, the Cincinnati Manual of      20 Rules and Regulations and Discipline Process      21 applicable here for this circumstance, is Rule 5.01,      22 which says "No member shall knowingly state, enter,      23 or cause to be entered on any official document, any      24 inaccurate, false, incomplete, misleading, or</p>	<p>1 Cincinnati police officer on November 7, 2002 you      2 were bound to follow these standards that I've just      3 read to you, Rule 5.1, Rule 2.12 and Procedure      4 12.545?</p> <p>5 A. Yes, sir.</p> <p>6 Q. When you arrived on the scene in your      7 cruiser, the -- the video that we saw today, was the      8 scene stabilized?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Okay. What, if anything, do you believe      11 needed to be done to stabilize the scene?</p> <p>12 A. Officers need -- I don't know. There were      13 people walking around, talking to each other. You      14 know, as soon as -- when I got there, I noticed that      15 there were two supervisors on the scene.</p> <p>16 Q. You noticed what?</p> <p>17 A. Two supervisors on the scene. I mean,      18 it's their job to stabilize a scene and -- and to      19 investigate an incident.</p> <p>20 Q. What does stabilizing a scene mean?</p> <p>21 A. Getting information, shutting it down,      22 protecting the perimeter, no one in or out,      23 gathering evidence.</p> <p>24 Q. Okay. There's a tab B, if you just page</p>
Page 79	Page 81
<p>1 improper information." Do you see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Okay. Specification 2 says that "Officer      4 Spellen observed a medical injury to Mr. Owensby and      5 rendered no appropriate first aid immediately once      6 the incident scene is stabilized" or sustained.</p> <p>7 And there's a Rule 2.12 which states      8 "Members are responsible for ensuring the safety and      9 welfare of persons and their personal property when      10 transporting or having custody of persons who are      11 sick, injured, arrested or incapacitated in any      12 way."</p> <p>13 You understood that this was the second      14 specification brought against you, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And there is a follow-up procedure      17 violation that's alleged on the next page, which      18 says, "Following any use of force resulting in a      19 citizen's injury, officers will ensure appropriate      20 first aid is rendered immediately once the incident      21 scene is stabilized." See that?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, setting aside the particular      24 facts of November 7, did you understand that as a</p>	<p>1 in a couple pages. And that's followed by a      2 disciplinary hearing recommendation.</p> <p>3 MR. HARDIN: Now there's going to be a      4 continuing objection. I have to pick it back      5 up some now that we're back to this again.</p> <p>6 MR. MARTINS: Okay.</p> <p>7 Q. And then there's an Exhibit C on the next      8 page. Do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And that's followed by an Internal      11 Investigations Section report, case number 00248,      12 dated September 24 of 2002. See that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. I'm going to skip that report.      15 And it's rather lengthy. Go back, you're going to      16 find a tab D, D as in David.</p> <p>17 A. Yes.</p> <p>18 Q. That's followed by performance reports on      19 you, correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And then there is a tab E as in echo?</p> <p>22 A. Correct.</p> <p>23 Q. Which is an evaluation supplement log?</p> <p>24 A. Yes, sir.</p>

Page 78 - Page 81

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13:02:18 1 THE WITNESS: Thank you, sir.

13:02:20 2 VIDEOGRAPHER: Sir, you have a right to

13:02:22 3 review this tape prior to its being shown to a

13:02:24 4 court.

13:02:24 5 MS. GEILER: I don't have any questions.

13:02:24 6 VIDEOGRAPHER: Will you waive that right?

13:02:26 7 MR. MARTINS: No.

13:02:27 8 THE WITNESS: No.

13:02:28 9 VIDEOGRAPHER: Thank you.

13:02:29 10 We're off the record. Time is 1:06.

13:02:32 11

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13:02:32 13   
VICTOR N. SPELLEN

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13:02:32 16 (Deposition concluded.)

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